

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Michael Darnell Swann, Jr.,

Plaintiff,

v.

Robin Fahnle and South Carolina Department
of Probation, Parole, and Pardon Services,

Defendants.

Case No. 9:20-cv-1629-SAL

ORDER

This matter is before the Court for review of the October 16, 2020 Report and Recommendation (“Report”) of United States Magistrate Judge Molly H. Cherry, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). [ECF No. 18]. In the Report, the Magistrate Judge recommends Defendants’ Motion to Dismiss be granted in part and denied in part. *Id.* No party filed objections to this Report, and the time to do so has passed.¹

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court is charged with making a de novo determination of only those portions of the Report that have been specifically objected to, and the Court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1).

¹ The Report was filed October 16, 2020, and gave the parties 14 days to file written objections. [ECF No. 18]. This made the initial deadline to file objections October 30, 2020. *Id.* However, the Report was returned as undeliverable on November 9, 2020. [ECF No. 20]. Plaintiff noticed a change of address on December 8, 2020. [ECF No. 21]. Accordingly, the clerk sent Plaintiff a copy of the docket sheet and Report at his updated address. *Id.* More than 17 days have passed since the Report was mailed to Plaintiff’s updated address. This accounts for the 14 days to file objections and the additional three days allowed if served by mail or otherwise allowed under Fed. R. Civ. P. 6.

In the absence of objections, the Court is not required to provide an explanation for adopting the Report and must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee’s note).

After a thorough review of the Report, the applicable law, and the record of this case in accordance with the above standard, the Court finds no clear error, adopts the Report, and incorporates the Report by reference herein. Accordingly, Defendants’ Motion to Dismiss is granted in part and denied in part. As to the claims against defendants SCDPPPS and Fahnle, in her official capacity, Defendants’ Motion to Dismiss is GRANTED. As to the claims for violation of any “Truth in Sentencing Act,” Defendants’ Motion to Dismiss is GRANTED. Defendants’ Motion to Dismiss the wrongful imprisonment claim against Fahnle in her individual capacity is DENIED.

IT IS SO ORDERED.

January 7, 2021
Florence, South Carolina

/s/Sherri A. Lydon
Sherri A. Lydon
United States District Judge